Supreme Court, U.S.
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NO. 94-

IN THE

SUPREME COURT OF THE UNITED STATES

ROBERT A. LESLIE, Petitioner

v.

WILLIAM C. LESLIE, Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES SUPREME COURT FOR THE COLORADO STATE SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

ROBERT A. LESLIE
Consul for petitioner
In Propria Persona
243 Berkeley Avenue
Irvine, Calif. 92715.
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54

QUESTIONS FOR REVIEW

1. Is the denial of a jury trial in a contested probate action, specifically provided for by Colorado statute, on demand, a violation of Amendment VII of the Federal Constitution.

2. Is the summary dismissal of a declarative relief action, seeking to revoke probate, demanding a jury trial, without notice or hearing, without writing a judgment, in violation of Colorado Law, a denial of due process under Constitution Amendment XIV.

3. Is the taxing of opposing counsel's attorney fees and costs, to appellant in an action to revoke probate, questioning the validity of a will, contrary to statute and case law, and the decision of other courts, a violation of Federal constitution Amendment XIV.

4. Is a judgment of dismissal, rendered

by a probate judge, who has expressed strong bias in previous rulings, in violation of statute and case law in Colorado, a violation of Amendment XIV of the Federal Constitution.

5. Does a Colorado probate court have the jurisdiction to enforce promissory notes executed in California, when the statute of limitations for enforcement of those notes has expired.

6. Does a Colorado probate Court and appellate courts have the legal authority to tax costs and opposing counsel's attorney fees to appellant, in Federal Court actions in violation of the decisions of these courts.

7. Is the legal concept of Equitable Estoppel by fraudulent concealment, in which the witnesses to the will, perjured themselves they observed the signing of the will applicable to a probate proceeding.

8. Is C.R.S. 15-10-401 constitutional which requires a will contestant make a personal appearance in a Colorado Court ten days after notice is mailed to his home.

PARTIES TO THE PROCEEDING

Bradley, Campbell, Carney and Madsen, 1717 Washington Avenue, Golden, CO 80401-1934.

Honorable Morris W. Santead Jr., Boulder County District Court, P. O. Box 4249, Boulder, Colorado, 80306-4249.

COURT OF APPEALS, STATE OF COLORADO, 2 East 14th Avenue, Denver, CO 80203

Colorado State Supreme Court, 2 East 14th Avenue, Denver, Colorado, 80203.

Colorado State Supreme Court, 2 East 14th Avenue, Denver, Co. 80203.

TOPICAL INDEX

QUESTIONS FOR REVIEW	A1
PARTIES TO THE PROCEEDING	A3
TOPICAL INDEX	A3

APPENDIX B A4

APPENDIX C A6

APPENDIX D A8

TABLE OF AUTHORITIES A10

U.S. CONSTITUTION A10

COLORADO STATUTES A11

INDEX OF CASES A12

GROUNDS FOR JURISDICTION A15

CONSTITUTIONAL PROVISIONS A16

STATEMENT OF THE CASE A17

REASONS FOR GRANTING A24

PETITIONER DENIED A JURY TRIAL A24

DISMISSAL VIOLATED COURT RULES A26

DISMISSAL DENIES DUE PROCESS A27

JUDGE SANTEAD'S BIAS A31

ACTED IN EXCESS OF JURISDICTION A32

SPEEDY PROBATE DENIES DUE PROCESS A35

PROMISSORY NOTES NOT ENFORCEABLE A39

93CA0185 NOT RES JUDICATA A41

C.R.S. 15-10-102 UNCONSTITUTIONAL A43

FEDERAL ACTION NOT FRIVOLOUS A45

EQUITABLE ESTOPPEL A48

CONCLUSION A49

PRAYER A51

VERIFICATION A52

APPENDIX B

COLORADO STATE SUPREME COURT 91SC45, 89CA2010, 89PR295 ESTATE OF ROBERT WILSON LESLIE CERTIORARI DENIED 1B

COLORADO STATE SUPREME COURT 91SC45, 89CA2010, 92CV1470, 89PR295 ESTATE OF ROBERT WILSON LESLIE 4/15/91 APPLICATION FOR CERTIORARI 1B

COLORADO STATE COURT OF APPEALS NO. 89CA2010 ESTATE OF LESLIE ET AL 1/10/91 JUDGES J. TURSI, J. PIERCE, J. PLANK REHEARING DENIED 4B

COLORADO STATE COURT OF APPEALS NO. 89CA2010, 89PR295, ESTATE OF LESLIE ET AL: JUDGES J. TURSI, J. PIERCE, J. PLANK PETITION FOR REHEARING 12/24/90 5B

DECISION COLORADO COURT OF APPEALS, 89CA2010, ESTATE OF ROBERT WILSON 5A

LESLIE, R. LESLIE V COLORADO NATIONAL BANK OF DENVER, 12/6/90: JUDGE TURSI, PIERCE, PLANK J.J. 11B

COLORADO COURT OF APPEALS, 89CA2010, ESTATE OF ROBERT WILSON LESLIE, R. LESLIE V COLORADO NATIONAL BANK OF DENVER, 1/31/90: JUDGE TURSI, PIERCE, PLANK J.J.: APPELLANT'S OPENING BRIEF 15B

BOULDER, COLORADO, DISTRICT COURT 89PR295, DIVISION 5 MINUTE ORDER, NOVEMBER 22, 1989, ROXANNE BAILIN JUDGE; DENIED MOTION TO REVOKE PROBATE 23B

BOULDER, COLORADO, DISTRICT COURT 89PR295, DIVISION 5, OCTOBER 17, 1989, ROXANNE BAILIN JUDGE: MOTION TO REVOKE PROBATE 24B

BOULDER, COLORADO, DISTRICT COURT 89PR295, DIVISION 5, OCTOBER 12, 1989, ROXANNE BAILIN JUDGE ADMITTED WILL TO PROBATE. 25B

BOULDER, COLORADO, DISTRICT COURT 89PR295, DIVISION 5, AUGUST 30, 1989, ROXANNE BAILIN JUDGE: OPPOSITION TO PROBATE: 25B

APPENDIX C

COLORADO SUPREME COURT CASE NO. 94SC254, CERTIORARI TO 93CA0185, 92CV1470, AUGUST 22, 1994, ROBERT A. LESLIE V. WILLIAM C. LESLIE, CERTIORARI DENIED 1C

COLORADO SUPREME COURT CASE NO. 94SC254, CERTIORARI TO 93CA0185, 92CV1470, MAY 2, 1993, ROBERT A. LESLIE V WILLIAM LESLIE ET AL PETITION FOR WRIT OF CERTIORARI MAY 2, 1993, 1C

DECISION COLORADO COURT OF APPEALS 93CA0185, 92CV1470, MARCH 10, 1994, JUDGE HUME, RULAND, AND CASEBOLT J.J., R A. LESLIE v. W. C. LESLIE 11C

APPELLANT'S CLOSING BRIEF, COLORADO COURT OF APPEALS 93CA0185, 92CV1470, MARCH 10, 1994 JUDGE HUME, RULAND, AND CASEBOLT J. ROBERT A. LESLIE V. W.C. LESLIE, 9/14/ 1993 **16C**

APPELLANT'S OPENING BRIEF, COLORADO COURT OF APPEALS 93CA0185, 92CV1470, MARCH 10, 1994 JUDGE HUME, RULAND, AND CASEBOLT J. ROBERT A. LESLIE V. WILLIAM C. LESLIE, **20C**

NOTICE OF APPEAL 93CA0185, 92CV1470, DIV 2, BOULDER DISTRICT COURT, MORRIS SANTEAD JUDGE: NOTICE OF APPEAL **43C**

92CV1470, DIV 2, BOULDER DISTRICT COURT, MORRIS SANTEAD JUDGE: REBUTTAL OPPOSITION MOTION TO STRIKE AND DISMISS COMPLAINT, R. A. LESLIE V WILLIAM C. LESLIE, JANUARY 15, 1993 **49C**

92CV1470, DIV 2, BOULDER DISTRICT COURT, MORRIS SANTEAD JUDGE, OPPOSITION MOTION TO STRIKE AND DISMISS, DECEMBER 24, 1992: 54C

92CV1470, DIV 2, BOULDER DISTRICT COURT, MORRIS SANTEAD JUDGE COMPLAINT FOR RECESSION BASED ON FRAUD, NOVEMBER 30, 1992: 59C

APPENDIX D

DECISION OF THE SUPREME COURT, STATE OF COLORADO, CASE NO. 94SC515, JANUARY 17, 1995, 89 PR 295, 93 CA0409 1D

PETITION FOR CERTIORARI SUPREME COURT, STATE OF COLORADO, CASE NO. 94SC515, JUNE 15, 1994, 9 PR 295, 93 C A0409 1D

PETITION FOR REHEARING ROBERT LESLIE WILLIAM C. LESLIE 93CA 409, 89 PR 295, MAY 4, 1994, JUDGES JONES, METZGER AND NEY J. MAY 4, 1994 18D

9A

DECISION COLORADO COURT OF APPEALS DENYING REHEARING, ROBERT A. LESLIE V WILLIAM C. LESLIE 93CA 409, 89PR295 AUGUST 4, 1994 JUDGES JONES, METZGER, AND NEY J. J. **27D**

DECISION COLORADO COURT OF APPEALS, ROBERT A. LESLIE V WILLIAM C. LESLIE 93CA 409, 89PR295 APRIL 21, 1994 JUDGES JONES, METZGER, AND NEY J. J. **28D**

APPELLANT'S OPENING BRIEF COURT OF APPEALS, ROBERT A. LESLIE V WILLIAM C. LESLIE 93CA 409, 89PR295 AUGUST 4, 1994 JUDGES JONES, METZGER, AND NEY J. J. **42D**

DISTRICT COURT BOULDER COLORADO ORDER OF FINAL SETTLEMENT AND DISTRIBUTION JUDGE MORRIS SANTEAD 2/24/93 **64D**

OPPOSITION TO DISTRIBUTION DISTRICT COURT BOULDER COLORADO ESTATE OF ROBERT WILSON LESLIE 89PR295 JUDGE MORRIS SANTEAD JUNIOR 2/6/93 **76D**

UNITED STATES DISTRICT COURT, COLORADO

R.A. LESLIE V COLORADO NATIONAL BANK OF DENVER ET AL 91-S-2123, JUDGE DANIEL B. SPARR, SEPTEMBER 29, 1992 **79D**

TABLE OF AUTHORITIES

UNITED STATES CONSTITUTION

AMENDMENT VII A20,21,24,26,35,50

AMENDMENT XIV A19,20,21,24,26,27, 33,35,43,44,47,50

COLORADO STATUTES

15-10-102 To promote a speedy and efficient system of managing and protecting the estates of protected persons so that assets may be preserved for application to the needs of protected persons and their dependents.

15-10-105-this code is a general act intended as a unified coverage of the subject matter, and no part of it shall be deemed impliedly repealed by subsequent legislation if it can reasonably be avoided.

15-10-401 . . . Notice shall be given: By mailing a copy thereof at least ten days before the time set by the hearing by certified, registered or by ordinary first class mail addressed to the person being notified at the post office address given in his demand for notice, if any, or at his office or place of residence if known; or (b) by delivering a copy thereof to the person being notified personally, at least ten days before the time set for the hearing, . . . A18

15-12-403 (1)(a) Upon commencement of a formal testacy proceeding the court shall fix a time and place of hearing. Notice shall be given in the manner prescribed in 15-10-401 . . .

15-12-406 (2) If the will is self proved, compliance with the signature and other requirements of execution

is presumed subject to rebuttal without the testimony of any witness upon filing the will and the acknowledgment unless there is proof of forgery or fraud affecting the acknowledgment or affidavit.

INDEX OF CASES

Abremsen v Mtn. St. Tel & Tel.
494 P.2d 1287 **A30**

Ballon v Gen. Elect. 393 F.2d 398 **A29**

Bastin v Martiez 698 P.2d 1373 **A49**

Baumgartner v Schey P.2d 375 **A25**

Bell v Cooper 881 F.2d 257 **A48**

Brn. v N Bank Peoria 247 NE.2d 894 **A37**

Carter v Thomkins 294 P.2d 265 **A31**

Clough v Clough 59 P 736 **A24**

Crawford v. McLaughlin 473 p.2d 725 **A29**

Cres. Cty. Lvstk. Co. v But.
Union 120 US 141 **A34**

Deposit Bank v Frankfort 191 US 520 **A33**

Estate of Dire 851 P.2d 271 **A35**

Fist Nat Bank v Lohman 827 P.2d 583 **A30**

Glenn v Mitchel 71 Colo. 394 A42

Gomez v Gt. Lakes 803 F.2d 250 A48

Gosard v Gossard 149 F.2d 111 A41

Griffeth v Wright 6 Colo. 248 A49

Hamilton v Neilsen 678 F.2d 714 A38

Hart v Tinen Surplus 712 P.2d 491 A31

Johmson v Neal 229 P.2d 939 A49

Jones v Hilde. 550 P.2d 429 US 1061 A47

Kerner v Peterson 12 NE.2d 884 A37

Kirby v Borg 440 P.2d 151 A41

Kremer v. Chem Con. Corp 456 US 461 A41

La Pl. Riv. v Hilder. 25 P.2d 187 A48

Mabray v Williams 291 P.2d 677 A29

Mer. Chad. Co. v Oct. Oil Co. A46
725 P.2d 17

Montana v US 440 US 153 A43

Norton v Leadville Corp.
610 P.2d 1348 A30

Parrish v DeRemer 494 P.2d 1287 A30

Patt. v North. Trust 122 NE 55 A38 A39

People St. Cal. v FCC 905 F.2d 1245 A42

People v Max 198 P 150 A45

Pepper v Hyman 189 P.2d 155 A41

Ralst. Oil Co. v July Corp.
719 P.2d 22 A49

Re Gardinella 547 P.2D 928 A27

Re. Murchison 349 US 133 A31

Resol. Tst. v Parker 824 P.2d 102 A40

Rupp v Cool 362 P.2d 396 A25

Sanchez v Sanchez 435 So.2d 347 A38

Sewell v Pub. Sve. Co. Colo.
832 P.2d n944 A30

Silver v Cormier 529 F.2d 161 A47

Webb v First N. Bank 487
N. E.2d 894 A37

West U. Realty Co. v Isaacs
679 P.2d 491 A46

Wil. Nat. Gas Co. v Okla.
City 890 F.2d 265 A34

Wright Miller Cooper 497 US 1003 A34

GROUNDS FOR JURISDICTION

The Supreme Court of the State of Colorado, meeting in Banc, denied the petition for review, being the

highest court in Colorado, January 17, 1995. Since this decision is in conflict with the Federal Constitution Amendment XIV, Case and Statutory law this case is submitted for your review to secure uniformity of decision. The jurisdiction of the US Supreme Court to review decisions of the state courts is codified in 28 USC §1257 which reads as follows: (3) by writ of certiorari, where the validity of a treaty or statute of the United States is drawn into question, or the validity of a state statute, is drawn into question on the grounds of it being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege, or immunity is specifically set up or claimed under the constitution, treaties, or statutes or commission held or authority exercised under the United States.

CONSTITUTIONAL PROVISIONS

Federal Constitution Amendment VII: In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved; and no fact, tried by jury, shall be otherwise re-examined in any court of the United States than according to the rules of the common law.

Federal Constitution Amendment XIV: Nor Shall any state, deprive and person of life, liberty, or property without due process of law; nor to deny any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

The testator, Robert Wilson Leslie died on August 24, 1989. Petitioner, his son, was sent a copy of his father's will, which appeared to be fraudulent, because the testators initials did

not appear on the first four pages of the will in conformity with the declaration on the final page of the will, and the attestation clause of the will; because the provisions of the will conflicted with the testator's notarized declaration filed three months prior to his death, and for other reasons.

An objection to probate was filed prior to the probate hearing. Appellant was not present, because of having received only six days notice, which was not sent through the postal system contrary to C.R.S. 15-10-401. The court held that notice was received 10 days prior to the hearing by my "agent," through the postal system, notwithstanding the fact petitioner submitted an affidavit from the postmaster, the letter did not go through the postal system contrary

to C.R.S. 15-10-102(1)(c) and that petitioner had no "agent." Petitioner was denied a hearing on the issue of notice, and a jury trial because of this lack of a personal appearance. This denial of a jury trial was unsuccessfully appealed to the Colorado Supreme Court three times in 93 CV 1470, 93 CA 185, 94SC254; 89 CA 2010, 91SC45; and 93 CV409. (APP 12D,48D)

Actions were filed in the Federal District Courts of Oklahoma and Colorado because of this denial of due process, and because the legal department of the Phillips Petroleum Company refused to release exemplars of the testator's signature in 1968, the only available source of this information, unless an action was filed in Oklahoma. Interrogatories were sent which defendant's refused to answer; the scrivener filed an answer to the Federal

Action in Oklahoma. The federal lawsuits were dismissed for lack of jurisdiction before a motion to compel a response could be obtained.

In the meantime, the probate judge, The honorable Morris Santead, approved the final distribution, and expressed strong disapproval of appellant's legal actions, awarding attorney fees and costs to the opposing party, contrary to case law and decisions of these courts, notwithstanding the fact, that he had not even read the pleadings.

Because petitioner was denied a jury trial on the issue of the validity of the will in violation of Federal Constitution Amendments VII and XIV, an action for declarative relief was filed at the Boulder District Court CV 1470. Opposing counsel filed a motion to dismiss and to strike which was opposed by appellant. No hearing

date was set six weeks later and a telephone inquiry was made to Judge Santead's office, regarding case 93CV 1470 to his secretary. Petitioner was informed the presiding judge was ill, that judge Santead was covering for him, and that he dismissed CV 1470, which demanded a jury trial on the validity of the will, (APP 5D, para. 2) and that both Judge Santead and the presiding judge refused to write a judgment; The clerk instructed me to write a judgment. A judgment was written addressing the concerns, regarding the lack of a jury trial, and denial of due process. which Judge Santead refused to sign, dismissing 93CV 1470 without entering a judgment (APP 8D); substituting instead, his final distribution order, of February 24, 1993, instructing appellant to mail a copy to opposing counsel, as

his order dismissing 93 CV 1470, again awarding attorney fees and costs to appellee, violating the law. (APP 9D) Incidentally, in California Courts, a Judge is not allowed to sit on a case, if he has already given a judgment in another court, because he is assumed to have bias.

Since there was no written judgment of dismissal, a reconsideration motion was impossible because there was nothing to reconsider, and was also contrary to the rules of the court, since this must be done within fifteen days of the entry of judgment, even though petitioner was not notified. The appellate court recognized this dismissal, contrary to the rules of court, and faulted petitioner for failing to file a reconsideration motion, which was also contrary to the rules of court mentioned in the

preceding paragraph. (APPENDIX 12C, line 13, 46D line 1-20).

Reconsideration is not a legal requirement for an appeal. The bias shown in the two distribution orders, rendered a reconsideration petition extremely unlikely to be successful, especially since Judge Santead refused to sign a judgment or provide one of his own. This dismissal was unsuccessfully appealed to the Colorado Supreme Court in 93CV1470,93 CA0185; 93CA409, 94 SC 515. (APP 47D). Judge Santead also awarded appellant's promissory notes against the estate, even though they were executed in California, outside the jurisdiction of the court and the statute of limitations had expired. This was unsuccessfully appealed to the Colorado State Supreme Court in 93 CA 409, 94SC 565. (APPENDIX 16D-17D)(APPENDIX 62D).

REASONS FOR GRANTING

PETITIONER DENIED JURY TRIAL

1. Trial by jury, a common law right, is guaranteed under amendment VII of the Federal Constitution, and by Colorado Statute and Case law.

Federal Constitution Amendment VII states," In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved . . ." Colorado Gen. stat. §3508 (Mills' Ann.St §4659 prescribes the only procedure by which the contest of a Will may be originally brought in the district court, and that an issue at law shall be directed whether the writing in question be the last will of the testator or not, to be tried by a jury, Clough v Clough 59 P 736, 27 Colo 97.

Colo. 1961. Either party on appeal from the county court in which the

case is tried to the court is entitled to a jury trial in the district court if demand for a jury trial is made within a reasonable time prior to trial, C.R.S. '53 37-6-13; rules of Civil Procedure, Rules 38(a, b) 40. Rupp v Cool, 147 Colo. 18, 362 P.2d 396. **It is clear that in a proper case a jury trial may be had in an action brought under a declaratory judgment rule,** Baumgartner v. Schey, 143 Colo.373 P.2d 375(1960).

A jury trial was requested in his MOTION TO REVOKE PROBATE (Appendix 25B, his Supreme court Appeal (1B); his Declarative Relief Action 92CV1470; in his OPPOSITION TO THE MOTION TO STRIKE AND DISMISS (APPENDIX 56C) APPELLANT'S CLOSING BRIEF (APPENDIX 37C, 5D, 12D); Yet, the Colorado Courts violated petitioner's due process rights under the Federal constitution amendment

VII, and XIV due process and equal protection clauses, since Colorado statute and Case Law provides for a Jury trial on demand, regarding the issue of the validity of the will.

DISMISSAL VIOLATED COURT RULES

2. Judge Santead's dismissal of CV1470 was in violation of C.R.C Rule 58 which states," Upon a decision by the court, the court shall promptly prepare, date and sign a written judgment and the clerk shall enter it on the register of actions as provided in rule 79(a). The effective entry of judgment shall be the date set forth in the written judgment." This was not done. Some four weeks after the date of judgment, no written judgment was entered in the record.

Petitioner only learned about the judgment, after calling Judge Santead's

office, some four weeks after it should have been entered, when petitioner was advised to write a judgment for Judge Santead's approval and signature.

DISMISSAL VIOLATES DUE PROCESS

This entry of judgment, without notice, prevented petitioner from submitting a petition for reconsideration, a denial of due process, and the equal protection clause of Federal Constitution Amendment XIV; and this prejudiced petitioner's appeal in 93 CA0185 (APPENDIX 12C line 13; 32D, line 21). "Read together, the rules provide that a motion for a new trial must be filed not later than 10 days following the notation for judgment in the trial docket's register of actions. In Re Gardinella, 190 Colo. 402, 547 P.2d 928 (1976).

Colorado State Law and Federal Law are identical regarding dismissal and

Summary Judgment. Defendant originally moved to dismiss on the pleadings, and has never filed any different motion. The order to dismiss is absolutely insupportable under rule 12. (APP 44D-45D) Under this rule, a defendant may make a motion to dismiss for failure to state a claim upon which relief may be granted Federal Rules of Civil Procedure 12 (b)(6). In addition, the rules provide that such a motion to dismiss shall be treated as one for summary judgment and disposed of as provided in rule 56. All parties shall be given reasonable opportunity to present all materials made pertinent to such a motion by Federal Rule of civil Procedure 12 (b). A complaint should not be dismissed for insufficiency unless it appears to a certainty that plaintiff

is entitled to no relief under any state of facts which could be proved in support of the claim. Ballon vs General Electric Co. 393 F2d 398.

Federal rule of Civil Procedure 12 (b)(6) is not applicable in this case, as plaintiff has clearly stated claims in the complaint upon which relief may be granted-that of equitable estoppel due to the perjured declaration of the notary and witnesses of the will, and the failure of execution of the will. Defendants motion to dismiss is based upon the theory that there is not any cause of action. Dismissal is precluded under Federal Rules of Civil Procedure rule 56. Since the court was improperly attempting to resolve fact issues, it should have gone under rule 56, but the dismissal is insupportable under that rule also. Crawford vs.

McLaughlin, 473 P2d. 725, 172 Colo. 366; Mabray v Williams, 291 P2d 677, 132 Colo. 523." Judge Santead committed an error in law dismissing 93CV1470, because there were two triable issue of fact, the validity of the will, and equitable estoppel (APP 8D). A court must decline to enter a summary judgment if there exists as genuine dispute over any material fact, Sewell v Public Service Co. of Colorado 832 P.2d n994 (Colo. App. 1991. (First National Bank v Lohman 827 P.2d 583 (Colo.) App.1992.) In considering a summary judgment motion, trial court must accept plaintiff's pleadings as true, even in the face of denial by moving party's pleadings. Norton v Leadville Corp, 43 Colo App. 527, 610 P.2d 1348(1979); Abramsen v Mountain States Tel. & Tel. Co., 177 Colo. 422, 494 P.2d 1287; Carter

v Thompkins., 133 Colo. 279, 294 P.2d 265.; Parrish v DeRemer, 117, Colo. 422, 494 P.2d 1287, and the allegation of a fraudulent will justifies a jury trial.

JUDGE SANTEAD'S BIAS

3. Judge Santead's preliminary and final order of distribution showed bias and disqualifies him from rendering a fair decision on 93 CV 1470 petition for declarative relief. Re. Murchison (1955) 349 U.S. 133, 75 S.Ct. 623, 99 L.ED 942 HELD: A judge may be disqualified in the broad sense of the term if he does not function in an impartial manner. Statements like, " 15.(APPENDIX D 72) There is ample precedent for burdening Dr. Robert A. Leslie's share of the estate with the litigation and administration expenses attribituable to his groundless and unsuccessful attempts to relitigate

the validity of his father's will." And, (APPENDIX D73) " The bank had administered the estate in good faith and, in particular, has acted in good faith in successfully resisting Dr. Leslie's appeals of this court's formal order of probate to the Colorado Court of Appeals, and the Colorado Supreme Court, and in successfully moving the United States District Court for the District of Colorado to dismiss Dr. Leslie's complaint in that court."; In his final distribution order, demonstrate this bias, especially since he had not read the pleadings before these courts.

ACTED IN EXCESS OF JURISDICTION

4. Judge Santead's determination that the Federal Actions were frivolous, taxing costs, and opposing counsel's attorney fees to petitioner, without reading the pleadings, and without

knowledge of the Federal Rules of Court, were in excess of his jurisdiction, as a probate judge in the Boulder Probate Court (D72 Para. #15) and in excess of the jurisdiction of the Court of Appeal in 93 CA 190. (APPENDIX 31D, paragraph 2, 36D). Where there is a rational basis grounded in law and evidence for plaintiff's claim, the trial court's finding that these claims were frivolous is not sustainable. Hart v Trinen Surplus Electronics Corp. 712. P.2d 491. It also violated the principal of comity, and the principal that, " The final power of the Federal Courts is to protect all who come before them relying on the rights guaranteed by the Federal constitution and established by the Judgments of the Federal Courts, Deposit Bank v Frankfort 191 U.S. 499,520 48 LEd, 276.

Also, Federal Judgments may be protected by the obligation of state courts not to discriminate against Federal Judgments, Crescent City Livestock Co. vs Butcher's Union Slaughterhouse 120 U.S. 141, 30 LEd. 614.

Federal Judgments may also be protected by "the final power of the Federal Courts to protect all those who come before them relying upon rights guaranteed by the Federal constitution and established by the judgments of the federal courts," Deposit Bank v Frankfort 24 S.Ct 154, 191 US 499, 520 L.ED588.

"It would be unthinkable to suggest that state courts should be free to disregard the judgments of federal courts." Williams Nat. Gas. Co v City of Oklahoma City, 890 F.2d 255,265 quoting Wright, Miller & Cooper,

Certiorari denied 106 S.Ct. 3236, 497 US 1003, 111 L.ED.2d 747.

SPEEDY PROBATE DENIES DUE PROCESS

The Colorado Court of Appeal argues," The general assembly promulgated the Colorado Probate Code for the basic purpose of promoting a "speedy and efficient system for settling the estate of the decedent and making distribution to his successors." (APPENDIX 13D, 40D) Section 15-10-102(1)(c), C.R.S. (1987 Repl. Vol. 6B); In Re Estate of Dire, 851 P.2d 271 (Colo. App. 1993)." This "speedy" probate is accomplished by denying petitioner his constitutional right to a jury trial, on the issue of the validity of the will (APP 5D) in violation of Federal Constitution Amendments VII, and XIV as pointed out in page 24A, and allowing petitioner only six days to prepare his case (APP 21D.

TAXING ATTORNEY COSTS AGAINST CASE LAW

The Colorado Court of Appeal States," As to whether the litigation and administration expenses attributable to the attempts of petitioner to challenge the will and its final distribution were appropriately charged against the petitioner's distributive share, there is no Colorado statutory or case law. However, we are persuaded by the cases from other jurisdictions that fees and expenses may be so collected."

This allegation is in conflict with the published case law: the honorable judge Santead, the brief of James Wade, and respondent's brief has failed to produce a single instance in statute or case law justifying the taxing of attorney fees and costs in a probate action questioning the validity of a will. The fallacy in the Colorado

Court of Appeal's position is elaborated on in Appellant's Opening Brief in 93 CA 409 in (APPENDIX 54D)," In the cited 26 cases in Appellant's Opening Brief, 93 CA 409, the losing party was awarded attorney fees and costs. In None of the cases cited by attorney Wade and Judge Santead, in the appellate briefs, or by the Court of Appeal, was there a question of law or of the validity of a will."

Webb vs First National Bank and Trust Co 487 N. E. 2nd, p713, citing Brown v Commercial National Bank of Peoria, 237 N. E. 567aff'd 247 N.E.2d. 894, cited by Judge Santead in 93 CV 1470 (APPENDIX D73) and cited by the court of appeal in 93 CA0185 (APPENDIX D35-D36) stated there was no basis to charge attorney's costs to only his share of the costs, because it was not vexatious, groundless, or

brought for harassment, and no justification exists for charging such costs. It cites Kerner v Peterson, 12 N. E. 2d. 884; Hamilton v Neilsen 678 F2d 709,714, which does not allow assessments of costs or charging attorney's fees against the unsuccessful party unless the claim was groundless or vexatious. In Patterson v Northern Trust Co. 122 N.E. 55, the Illinois Supreme Court held: An attorney's fee cannot be charged personally against a defeated plaintiff using trustee as beneficiary, absent statutory authority.

"Statute that provided for award of fees for services rendered to an estate by attorneys did not authorize imposition of personal liability upon the beneficiaries for the trustee's attorney fees." Wests F. S. A. §733.106.(3,4). Sanchez v Sanchez,

435 So. 2d 347. "An attorney's fee cannot be charged against a defeated plaintiff suing a trustee as beneficiary absent statutory authority," Patterson v. Northern Trust 122 N.E. 55. "3 Page on Wills § 26.148, at 355, "it is error for a court to tax attorney's fees against specific devisees or legatees." Etc.

PROMISSORY NOTES NOT ENFORCEABLE

5. Appellant disputes the probate court's determination that the unpaid promissory notes are enforceable pursuant to the judgment of the probate court December 21, 1991, and in taxing the promissory notes of appellant against his share of the estate, while not taxing William Leslie's promissory notes against his share of the estate.

This was objected to in letters to Mr. Wade and John Holt and in the opposition to distribution (APPENDIX

D79) and before the Court of Appeal in (APPENDIX 16D-17D). This was justified By attorney Wade by the expiration of the statute of limitations.

Petitioner's promissory notes are not enforceable for the same reason, and additionally because their enforcement is outside the jurisdiction of the Colorado Courts. The notes were signed in California and mailed to Oklahoma, and an action to enforce these notes must be commenced in California. **Colo. App. 1991** Unless there is a particular place of payment/performance for contract, venue is only proper in county where defendant resides or county where plaintiff resides if defendant is served in that county. Rules Civ. Pro., Rule 98(c)(1,2); App.Proc.,Rule 3. Resolution

Trust Corp. v. Parker, 824 P.2d 102.

No action has been commenced in the county where defendant resides. If such an action were commenced, it would be time barred by the statute of limitations. **C.C.A.Colo. 1945.** Generally, a negotiable instrument, payable on demand, becomes due immediately, and statute of limitations begins to run from its date of execution and not from the date of its demand. Gossard v Gossard 149 F2d. 111; Kirby v Bourg, 440 P.2d 151, 165 Colo. 500; Pepper v Hyman, 189 P2d 155, 117 Colo. 365. An action on a note is time barred after the lapse of six years from date of maturity of note. The court of appeal did not comment on these arguments although they were presented.

93CA0185 NOT RES JUDICATA

The Colorado Court of Appeal made an error in law when it declared

petitioners arguments res judicata (APPENDIX 13C) "Plaintiff challenged whether the will was properly executed in his earlier action, and is therefore, barred from raising it in this action." on two grounds: 1. These issues were not decided on their merits;(APPENDIX 23B) "The return card was signed on October 2, 1989, 10 days before the hearing. The motion to revoke probate is denied." The court of appeal states (APPENDIX 15C) "The determination of issues in probating a will is a determination on its merits." Glenn v Mitchel, 71 Colo. 394.(APP 21D) In petitioner's, case the probate was not decided on its merits, but because petitioner failed to make a personal appearance on six days notice, as pointed out on page 42 of this brief. In People of State of Cal. v F.C.C. 905 F.2d 1245 The Ninth Circuit Court

points out," Res judicata does not act as a bar, however when the party against whom the earlier decision is asserted did not have a 'full and fair' opportunity to litigate the claim.(APP 21D) Kremer v. Chemical Constr. Corp., 456 U.S. 461, 480-81 &n.22, 102 Sct., 1883, 1896-7 and n.22 72 L.Ed.2d 262 (1982) The United States Supreme Court pointed out in Montana v Unites States 440 US 147,153. Res judicata and collateral estoppel only apply when a final judgment is made on the merits.

C.R.S. 15-10-102 IS UNCONSTITUTIONAL

5. C.R.S. 15-10-102 (1)(c) is unconstitutional because it deprives will contestants of property without due process of law. Under this law an interested party is foreclosed from contesting a will unless a personal appearance is made 10 days after the mailing of the notice. He is not

required to receive the notice, and if, for any reason, the mail is delayed, his rights are foreclosed without notice or hearing.

A will contestant residing some distance from Colorado, certainly could not make a timely appearance, thus this law is unconstitutional under the equal protection clause of Federal Constitution Amendment XIV, because it discriminates against heirs residing outside of Colorado, restricting their right to travel.

Under the provisions of the act in ten days the petitioner must: 1. Study the will, 2. Submit it to as document examiner, 3. Receive his report, 4. Locate and interview the witnesses who signed the will, 5. Prepare a pleading indicating all areas of fraud in detail. [Any omissions cannot be corrected in future pleadings (APPENDIX

15C, 30D)]. 6. make a personal appearance. Failure to comply with any of these requirements proscribes an opportunity to be heard effectively denying him due process in Colorado, in the interest of a "speedy probate" (APPENDIX 13D, 40D.)

FEDERAL ACTION NOT FRIVOLOUS

The Colorado State Court of appeal notes on page 38D (APPENDIX) "In the Federal Court Action, the court set forth six grounds for dismissal, any one of which could justify the findings that the action was frivolous or groundless. The cumulative effects of the six grounds, would in a Colorado state Court most assuredly constitute grounds for a finding of groundless or frivolous litigation." This is a remarkable finding, considering that neither the federal dismissal order nor any Federal Court Pleading was

in the appellate record. It is also contrary to published case laws: A claim or defense is frivolous if the proponent can present no rational argument based on the evidence or law is support of that claim or defense, Western United Reality Inc. v, isaacs, 679 P.2d 1063 (Colo. 1984.); Hart & Trinen v. Surplus Electronics Corp., 712 p.2d 491 (1985); Merrill Chadwick Co. v October Oil Co. 725 P.2d 17 (1986). A copy of this dismissal order is in (APPENDIX 79D.) The order given four not six grounds for dismissal. Murray's Federal Practice was researched prior to filing the Federal action. It stated Federal Courts have the authority to withhold funds to enforce probate. Later, Federal policy became more restrictive regarding Federal Jurisdiction, and added the $50,000 requirement; this information

was unavailable at the law library at the time of filing the suit.

STATE ACTIONS NOT FRIVOLOUS

Contrary to the opinion of the Honorable Judge Santead, the arguments for revocation of probate are soundly based in statute, and case law; his summarily dismissal of petitioner's pleadings, without reaching their merits, and his uncritical acceptance of opposition's pleadings, with their erroneous interpretation of statute and case law, is a violation of petitioner's due process rights guaranteed in U.S. Constitution amendment XIV; Const., art 2 §25, 1967 perm. supp., C.R.S., 66-29-14. "Due process of law" affords a hearing before it condemns, and gives judgment only after trial. People v Max 198 P. 150,70 Colo. 100. Access to the courts of the United States is a constitutional

right guaranteed by due process clause of fifth and fourteenth amendments. U.S.C.A. Const. Amendments V, XIV; Silver v. Cormier, 529 F.2d 161; Jones v Hildebrandt, 550 P2d., Certiorari granted 429 U.S. 1061. Due process always implies hearing or trial and judgment. Const. art 2, §25. La Planta River & Cherry Creek Ditch Co. v. Hinderlider 25 P2d.187.

EQUITABLE ESTOPPEL

7. Equitable estoppel by fraudulent concealment provides that a defendant is estopped from exerting a statute of limitations defense if a defendants own misconduct prevented plaintiff from filing a suit in a timely manner applicable in the ninth circuit, as in California Law: Bell v Cooper 881 F2ds 257; Gomez v Great Lakes Division National Steel Corp. 803 F2d 250.

Generally, equitable estoppel is a

rule of justice which in its proper field prevails over all other rules and doctrine, and may be invoked to cut off rights or privileges conferred by statute, and constitutional rights may be effectively waived by conduct consisting of action or failure to act." Johnson v Neel, 229 P2d. 939, 115 Colo. 377. See also Griffeth v Wright 6 Colo. 248; Ralston Oil Co. vs. July Corp, 719 P2d. 22; Bastian v Martinez, 698 P2d. 1373. (Citations)

It is sufficient for the plaintiff to allege facts, which if proved, would constitute an equitable estoppel. Once properly alleged, the issue of equitable estoppel is to be tested through the trial process, as pointed out in the preceding citations.

CONCLUSION

This action is a will contest. Petitioner was denied a jury trial

on the issue of the validity of the will because a personal appearance was not made on six days notice contrary to C.R.S. 15-10-102 (1)(c) even though petitioner filed an objection to probate prior to the hearing. The judge determined notice was given by petitioner's "agent," even though petitioner had no "agent" and notification was not sent through the mail as required by this statute. No hearing was granted and this denial was unsuccessfully appealed to the Colorado Supreme Court. Petitioner believes Colorado Statute C.R.S. 15-10-102 (1)(c) is unconstitutional because it deprived petitioner of property without due process of law. Although probate is an equitable proceeding, the question of the validity of a will is a triable issue of fact

to be determined by a jury on request. The Colorado Courts have denied petitioner this right through two appeals to the Colorado Supreme Court in violation of "due process" rights guaranteed in Amendments VII and XIV of the Federal Constitution and statutory and Case Law. The probate judge expressed strong personal bias against petitioner for attempting to enforce those rights. The same probate judge dismissed petitioners action for declarative relief without notice or hearing and without writing a judgment because the presiding judge was ill. These courts have taxed court costs, and opposing counsel's fees to petitioner in his attempt to enforce these rights guaranteed by the Federal constitution in violation of compelling case law in all of the 28 cited cases. In addition the Colorado Courts have

enforced promissory notes executed in California, whose statute of limitations have expired in excess of their jurisdiction, in violation of states rights, and contrary to statutory law.

WHEREFORE, the petitioner prays judgment as follows: 1. For an order from your court submitting the issue of the validity of the will to a jury trial. 2. An order from your court directing that petitioners promissory notes executed in California are not enforceable in Colorado. 3. An order that legal fees be paid by the estate. 4. That C.R.S. 15-10-401 statute be declared unconstitutional. 5. Any further relief that to the court seems just.

VERIFICATION

I, Robert A. Leslie am the author of this petition. The information

contained therein is true of my personal knowledge. I declare under penalty of perjury the foregoing is correct.

Executed March 15, 1995, at Irvine, California.

Robert A. Leslie

Robert A. Leslie

In Pro per